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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 NICOLAS GONZALEZ,

15 Plaintiff,

16 v.

17 SOUTHERN WINE & SPIRITS OF
18 AMERICA, INC.,

19 Defendant.

Case No. 2:11-cv-5849-ODW(PLAx)

**ORDER RE MOTIONS FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ATTORNEY'S FEES [26], [27]**

20 Before the Court are Plaintiff's two motions: Motion for Attorney's Fees and
21 Expenses; and, Motion for Final Approval of Class Action Settlement. (Dkt. Nos. 26,
22 27.) On February 28, 2012, the Court found the class action settlement acceptable
23 with the exception of two terms—the attorney's fee award multiplier and *cy pres*
24 recipients—and ordered the parties to revise the settlement appropriately. Plaintiff's
25 counsel filed a supplemental memorandum addressing the two issues and seeks the
26 Court's final approval of the settlement. (Dkt. No. 36.) Having considered Plaintiff's
27 papers filed in support of the motions and Defendant's non-opposition, the Court finds
28 as follows.

A. *Cy pres* recipients

Upon the parties' suggestion, the Court finds the *cy pres* recipients appropriate for this case and orders the remainder of the settlement to be distributed to the Legal Aid Society Employment Law Center and Asian Law Caucus. (Khorrami Decl., Ex. A § 3.8 (Dkt. No. 28); Khorrami Decl. ¶ 12 (Dkt. No. 36-1.))

B. *Lodestar* calculation

The *lodestar* method provides a reasonable determination of attorney's fees, and is calculated by multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate.¹ *Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000). In its *lodestar* analysis, Plaintiff's counsel Khorrami, LLP provides the following billing figures for its attorneys as of February 6, 2012:

Name	Years out of Law School	Hours Billed	Hourly Rate	Total Fee (Rounded)
Shawn Khorrami	17	22.4	\$650	\$14,560
Robert J. Drexler, Jr.	28	16.4	\$620	\$10,168
Launa Adolph	9	218.5	\$495	\$108,158
Paul Mata	5	245.7	\$375	\$92,138
Eugene Allen	1	22.1	\$300	\$6,630

(Khorrami Decl. ¶ 32 (Dkt. No. 28.)) And its staff as of February 6, 2012:

Name	Position	Hours Billed	Hourly Rate	Total Fee (Rounded)
David Cragg	Law Clerk	42.0	\$170	\$7,140
Corina Valderrama	Law Clerk	53.0	\$170	\$9,010
Carol Miller	Paralegal	11.4	\$155	\$1,767

(*Id.* ¶ 36.)

¹ Under Ninth Circuit law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the *lodestar* method to calculate the attorney's fee award. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295–96 (9th Cir. 1994). The Court finds that the *lodestar* method suggested by Plaintiff's counsel is more applicable in this case, and declines to consider the attorney's fee award in terms of a percentage of the overall settlement.

Co-counsel billed the following hours in this litigation:

Name	Years out of Law School	Hours Billed	Hourly Rate	Total Fee (Rounded)
Gary Daglian	8	39.5	\$375	\$14,813

(Daglian Decl. ¶¶ 3–4.)

Further, between February 6, 2012 and March 13, 2012, counsel spent an additional 33.6 hours as follows:

Name	Years out of Law School	Hours Billed	Hourly Rate	Total Fee (Rounded)
Shawn Khorrami	17	1.7	\$650	\$1,105
Robert J. Drexler, Jr.	28	5.8	\$620	\$3,596
Launa Adolph	9	22.4	\$495	\$11,088
Paul Mata	5	3.7	\$375	\$1,388

(Khorrami Decl. ¶¶ 4–5 (Dkt. No. 36-1.))

Finally, counsel indicates that an additional 20 hours are required to administer the settlement after March 13, 2012 at an average rate of \$500, for a total of \$10,000. (*Id.* ¶ 6.)

Thus, the *lodestar* calculation is \$291,559, which represents 724.6 hours at an average rate of \$402.37 per hour.² Upon reconsideration, and despite its previous findings, the Court finds this amount excessive.

Plaintiffs initiated this case in Los Angeles County Superior Court on May 26, 2011. Defendants removed the case to Federal Court on July 15, 2011. On October 28, 2011, the parties stipulated to class certification, which the Court granted three days later. On November 23, 2011, Plaintiff filed a motion for preliminary approval of the settlement, which the Court granted on November 23, 2011. By all

² The Court notes that counsel's calculations are incorrect. Counsel correctly stated that the *lodestar* was \$291,561 (\$2 difference from the Court's calculation), but incorrectly claimed that this represented 665 attorney and staff hours. (Supp. Mem. 3).

1 indication, the case was settled and effectively over by the end of November. No
 2 substantive motions were ever filed in this case.

3 *1. Counsel's expended hours is unreasonably high*

4 Based on this case history, the Court must inquire whether the 724.6 hours were
 5 reasonably expended in this litigation, taking into account the following factors:
 6 “(1) the novelty and complexity of the issues, (2) the special skill and experience of
 7 counsel, (3) the quality of representation . . . (4) the results obtained, and (5) the
 8 contingent nature of the fee agreement.” *Morales v. City of San Rafael*, 96 F.3d 359,
 9 364 n.9 (9th Cir. 1996).

10 What strikes the Court is the overall excessive billing in an unremarkable case,
 11 which had no substantive motions, and was an easy victory for the Plaintiff. (*See e.g.*,
 12 Khorrami Decl. ¶ 32 (Dkt. No. 28) (claiming 218.5 hours at a rate of \$495 for Launa
 13 Adolph and 245.7 hours at a rate of \$375 for Paul Mata.)) This case concerned
 14 straightforward allegations of unpaid wages and rest periods, which the parties settled
 15 within six months. Counsel's unfettered billing of nearly \$300,000 (without any
 16 multiplier) is a windfall under the circumstances. The Court does not believe that a
 17 typical law firm, on a hourly basis, would have charged a client nearly as much for a
 18 similar employment suit.

19 First, although the Court recognizes that some discovery was necessary, the
 20 Court questions whether it was necessary to review over “49,000 pages” of discovery
 21 documents or interview “more than 70 Class Members,” when the issue in this case
 22 was whether Defendant's employees were properly paid and given the required rest
 23 periods. (*Id.* ¶¶ 5–6.) Nevertheless, the Court finds a relatively meager amount of
 24 discovery work performed in this case, which consisted of: 34 document requests and
 25 19 interrogatories propounded by Plaintiff; 38 document requests propounded by
 26 Defendant resulting in Plaintiff's production of 430 pages of documents; a deposition
 27 of Plaintiff Gonzalez; and a two-day 30(b)(6) deposition of Defendant; and signed
 28 declaration from 33 Class members. *Id.* ¶¶ 5–7. Based on this quantity of discovery,

1 the Court finds that a reasonable amount of time required to perform this work would
2 have been about 150 hours.

3 Second, the Court notes that the vast majority of costs were incurred between
4 mid-September 2011 to October 2011. This strongly suggests that the bulk of
5 counsel's time spent on this case was not the full six month mentioned above, but only
6 for a span of one and a half months. (Khorrami Decl., Ex. C (Dkt. No. 28.))

7 Third, counsel states that since February 6, 2012 when it filed the instant
8 motion, it spent an additional 33.6 hours at a rate of \$511 an hour, totaling \$17,177.
9 Yet, all that occurred between February 6, 2012 to date was that the Court ordered the
10 parties to revise the *cy pres* recipients and denied the attorney's fee multiplier. (Dkt.
11 No. 33.) The vast majority of the 33.6 hours spent resulted in a supplemental
12 memorandum (with accompanying documents), which was used to argue that counsel
13 was entitled to higher attorney's fees. These hours cannot be construed to be for the
14 benefit of the class and should be significantly reduced.³

15 Fourth, the Court is not convinced that the expended hours were necessary,
16 given Plaintiff's expertise and the minimal work required. Counsel has shown that it
17 is quite the expert through its recitation of over 20 representative cases, where it has
18 obtained total class fund settlements in excess of \$400M. (Khorrami Decl. ¶¶ 25–26
19 (Dkt. No. 28.)) Given counsel's expertise, they are expected to not do things from
20 scratch, e.g., drafting the stipulation and settlement, preparing declarations, and
21 writing the instant motions. Indeed, in this case, the only noteworthy papers filed by
22

23 ³ Similarly, the work expended towards counsel's motion for attorneys fees was not for the benefit
24 of the class. (Dkt. No. 26.) The Court must act as the fiduciary for the class plaintiffs and scrutinize
25 counsel's efforts when directed solely for its own interest. *In re Mercury Interactive Corp. Sec.*
26 *Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (“[P]laintiffs’ counsel, otherwise a fiduciary for the class . .
27 . becomes a claimant against the fund created for the benefit of the class.”). Courts have routinely
28 cut attorney hours when expended towards motions for attorney's fees. *See Johnson v. Credit Int'l,*
Inc., No. C-03-100 SC, 2005 U.S. Dist. LEXIS 21513, at *8 (N.D. Cal. July 28, 2005) (reducing
attorney hours spent for a motion for attorney's fees from 8.9 to 2.3).

1 counsel with the Court are: the complaint (Dkt. No. 1); a joint Rule 26(f) report (Dkt.
2 No. 12); a stipulated protective order (Dkt. No. 17); a class certification (Dkt. No. 22);
3 a motion for preliminary approval of settlement (Dkt. No. 24); and the two instant
4 motions (Dkt. Nos. 26, 27).⁴ An experienced class action attorney will have samples
5 of these common class action documents—in this instance, counsel should have over
6 20 cases worth of samples. Any significant time spent on this litigation should have
7 been directed towards specific facts and situations that significantly differed from
8 those of a run-of-the-mill employment class action suit. Yet, this case appears to be
9 just another such run-of-the-mill employment class action suit.

10 Counsel's high billable rates reflects its expertise. In other words, the higher an
11 attorney's hourly rate, the faster and more efficiently he is expected to do the same
12 amount of work. It would be double accounting to allow counsel to bill both a high
13 hourly rate for its expertise, and then a high number of hours (reflecting lack of
14 expertise) for a particular quantity of work.

15 Although counsel has not submitted any detailed billing statements to assist the
16 Court in its calculation, the Court believes that these detailed billing statements would
17 not have altered this Court's judgment. The Court presumes these billing statements
18 are nothing more than pages of entries of tasks performed in connection with this
19 litigation. A billing statement reflecting discrete hours expended will not persuade the
20 Court that the work was warranted anymore than the information provided in the
21 tables provided above.⁵

22 Accordingly, the Court cuts the billable hours by 55%, thereby reducing the
23 *lodestar* hours from 724.6 to 326.1. *See Andrews v. Lawrence Livermore Nat'l Sec.,*
24 *LLC*, No. C 11-3930 CW, 2012 U.S. Dist. LEXIS 5571, at *8–11 (N.D. Cal. Jan. 18,

25
26 ⁴ The Court gives Plaintiff's counsel the benefit of the doubt that they prepared all of these papers
themselves, without the assistance of Defendant's counsel.

27 ⁵ Further, much of the details of the time entries would be redacted for privilege, thereby leaving
28 nothing more than a table of billed hours.

2012) (the court cutting 38% of the hours claimed); *Montoya v. Creditors Interchange Receivable Mgmt., LLC*, CV 10-3037 PSG (Ex), 2011 U.S. Dist. LEXIS 64611, at *6–11 (C.D. Cal. June 17, 2011) (the court cutting 43% of the hours claimed).

2. *Counsel's hourly rate is high*

To ascertain whether the hourly rate is reasonable, a comparisons should be made based on the prevailing rates in the community for similar work performed by attorneys of comparable skill, experience, and reputation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Although Plaintiff argues that counsel's hourly rates are well below the market rate and below those suggested by the Laffey Matrix, the Court is not convinced that counsel's rates reflect those of its peers in employment law practice.

For instance, Mr. Daglian is co-counsel to Khorrami. (Daglian Decl. ¶ 2.) He is head of Daglian Law Group, APLC and has eight years of experience in various legal areas, including employment law. (*Id.*; Daglian Law Group, APLC, <http://www.daglianlaw.com>.) Mr. Daglian's billable rate is \$375. (*Id.* ¶ 4.) In contrast, Ms. Adolph is an associate at Khorrami with nine years of experience, but her billable rate is \$495. (Khorrami Decl. ¶ 32 (Dkt. No. 28.)) As a further comparison, Mr. Mata, an associate at Khorrami with five years of experience, has a billable rate of \$375. *Id.*

The Court finds no reason, and counsel has not justified, why Mr. Daglian's billable rate is significantly lower than that of a similarly experienced associate at Khorrami. Accordingly, the Court finds that Ms. Adolph billable rate should be downwardly adjusted to \$375 to match that of Mr. Daglian, reflecting a 24.2% reduction from \$495. Further, the Court deems this adjustment should logically apply to all attorneys and staff at Khorrami, as the above discussion suggests that all of Khorrami's rates generally exceed market rates.

Thus, the composite hourly rate of \$402.37 is reduced by 24.2% to \$304.83 per hour. The Court finds that this average hourly rate of \$304.83 for attorneys and staff

1 is commensurate with counsel's experience. Therefore, Plaintiff's *lodestar* figure is
 2 326.1 hours multiplied by \$304.83 per hour, totaling \$99,395.11.

3 **C. Attorney's fee multiplier**

4 In its previous order, the Court found the multiplier unnecessary given the
 5 circumstances of the case. (Dkt. No. 33.) The Court reiterates that finding.

6 After making the customary *lodestar* calculation, a court may assess whether it
 7 is necessary to adjust the presumptively reasonable *lodestar* figure on the basis of 12
 8 factors. *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006). These 12
 9 factors are:

10 (1) the time and labor required, (2) the novelty and difficulty of the
 11 questions involved, (3) the skill requisite to perform the legal service
 12 properly, (4) the preclusion of other employment by the attorney due to
 13 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed
 14 or contingent, (7) time limitations imposed by the client or the
 15 circumstances, (8) the amount involved and the results obtained, (9) the
 16 experience, reputation, and ability of the attorneys, (10) the
 "undesirability" of the case, (11) the nature and length of the professional
 relationship with the client, and (12) awards in similar cases.

17 *Id.*

18 Counsel argues that the Court abuses its discretion if it fails to apply a risk
 19 multiplier when "(1) attorneys take a case with the expectation that they will receive a
 20 risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and
 21 (3) there is evidence that the case was risky." *Fishel v. Equitable Life Assurance*
 22 *Soc'y of the United States*, 307 F.3d 997, 1008 (9th Cir. 2002). The Court finds
 23 counsel's argument misleading, as subsequent cases appear to have superseded this
 24 analysis.

25 In *Perdue*, the Supreme Court noted that enhancements are awarded only in rare
 26 and exceptional circumstances and "may not be awarded based on a factor that is
 27 subsumed in the *lodestar* calculation." *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1673
 28 (2010). For example, *lodestar* factors such as the novelty and complexity of a case,

1 and quality of counsel are reflected in counsel's hourly rate. *Id.* Additionally,
2 whether the fee was fixed or contingent is no longer a valid enhancement factor. *In re*
3 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 n.7 (9th Cir. 2011).

4 The Court finds counsel's arguments for enhancement lacking and intended to
5 duplicate factors incorporated into their billable rates. First, counsel argues that they
6 "would not have taken this case if they knew they would be limited to recovery of
7 their *lodestar* calculation in the event they were successful." (Supp. Mem. 4.) Yet,
8 the Court notes that: counsel represented that it "does not perform much hourly non-
9 contingent work"; counsel's practice mostly consists of class action lawsuits; and
10 Khorrami only has two other class action lawsuits pending. (Khorrami Decl. ¶ 10
11 (Dkt. No. 36-1); Khorrami Decl. ¶ 25–26 (Dkt. No. 28.)) Putting these observations
12 together, the Court finds that it is more likely than not that counsel was more than
13 happy to take the instant contingency case, since it is the typical case that they litigate,
14 and this is especially true since counsel did not have many other cases to work on.

15 Counsel also argues that the case was taken on contingency and the case was
16 risky—thereby entitling them to a fee enhancement. As discussed above, the
17 distinction between a contingency arrangement and a fixed fee arrangement does not
18 merit an enhancement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942
19 n.7. As for risk, every case is risky—"the risk of loss in a particular case is a product
20 of two factors: (1) the legal and factual merits of the claim, and (2) the difficulty of
21 establishing those merits." *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992).
22 The first factor, though not reflected in the *lodestar*, should not be applied because it
23 would encourage nonmeritorious claims to be brought due to the enhancement
24 incentive. *Id.* at 563. The second factor, is already reflected in the *lodestar*, either in
25 the hourly rate or in the number of hours expended; granting an enhancement would
26 "amount to double counting". *Id.* at 562–63.

27 Counsel may have raised other arguments to support enhancement, but it did
28 not. Other reasons for enhancement may include unanticipated delay in payment or in

1 situations where the hourly rate employed in the *lodestar* calculation does not
2 adequately measure the attorney's true market value. *Perdue*, 130 S. Ct. at 1674–75.
3 But counsel has not alleged an unanticipated delay in payment. The fact that this case
4 was accepted on contingency necessarily meant a delay in payment. Nonetheless, this
5 delay cannot be claimed to be unanticipated, since every contingency case means a
6 payment upon resolution. Further, this case was settled quickly. As for counsel's true
7 market value, enhancing the *lodestar* to reflect an inadequate billable rate contradicts
8 the Court's above finding that the claimed billable rates were already excessive.

9 Thus, the Court denies counsel's request for a multiplier of 1.5 and deems that
10 the *lodestar* figure, without an enhancement multiplier, is the appropriate measure of
11 attorney's fees in this case.

12 **D. Miscellaneous**

13 The Court finds the remaining terms of the settlement acceptable.

14 **E. Conclusion**

15 For the reasons stated above, the Court approves the settlement of this class
16 action suit subject to the changes ordered above.

17 Accordingly, Class Counsel is awarded attorneys' fees in the amount of
18 \$99,395.11. Class Counsel will be reimbursed for its costs incurred in connection
19 with this litigation not to exceed \$10,000. Plaintiff Gonzalez is awarded a service
20 payment in the amount of \$5,000 for his effort on behalf of the Class. The Claims
21 Administrator is awarded its actual fees and expenses not to exceed \$15,700. The *cy*
22 *pres* recipients for the settlement will be Legal Aid Society Employment Law Center
23 and Asian Law Caucus. This case is **DISMISSED WITH PREJUDICE**.

24 **IT IS SO ORDERED.**

25
26 March 29, 2012

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HON. OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE